

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PHILLIP B. ASHDOWN,)	3:11-cv-00832-LRH-WGC
)	
Plaintiff,)	<u>MINUTES OF THE COURT</u>
)	
vs.)	September 6, 2012
)	
PRISON HEALTH SERVICES, et al.,)	
)	
Defendants.)	
_____)	

PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: KATIE OGDEN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Before the court is a Plaintiff's motion to submit an expert testimony affidavit in support of his medical negligence claim. (Doc. # 104.)

On April 16, 2012, Defendants filed a Partial Motion to Dismiss, arguing in part that to the extent Plaintiff is asserting a state law claim for medical malpractice, it should be dismissed as a result of Plaintiff's failure to comply with Nevada Revised Statute 41A.071. (Doc. # 48.) This statute provides:

If an action for medical malpractice or dental malpractice is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit, supporting the allegations contained in the action, submitted by a medical expert who practices or who has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged malpractice.

Nev. Rev. Stat. 41A.071.

The court has concurrently issued a Report and Recommendation recommending that Defendants' motion (Doc. # 48) be granted, and that Plaintiff's medical malpractice claim be dismissed without prejudice because he failed to submit the affidavit of merit when he filed suit. As the court states in its Report and Recommendation, the Nevada Supreme Court is very clear on this issue, and a complaint filed without the supporting affidavit is **"void ab initio, meaning it is of no force and effect."** *Washoe Med. Ctr. v. Second Judicial Dist. Ct.*, 148 P.3d 790, 794 (2006). Such a complaint "does not legally exist and thus it cannot be amended." *Id.*

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Accordingly, Plaintiff's motion to submit an affidavit in support of this claim at this late juncture is **DENIED**.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: /s/
Deputy Clerk